

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

26670

FILE: B-210093

DATE: July 6, 1983

MATTER OF: Hill Industries

DIGEST:

1. Protest filed within 10 days of agency rejection of protester's proposal because it could not show that it was approved source and could not gain approved-source status is timely. Protester was not required to file protest prior to due date for submission of proposals because solicitation did not clearly state that part must be manufactured by only previously approved source and in such restricted procurements, agencies are required to accept proposals from nonapproved sources and give them the opportunity to qualify.
2. Protest is denied because procurement met all requirements for an acceptable, approved-source, restricted procurement--restriction met bona fide needs of agency; nonapproved sources were permitted to submit proposals and could become qualified through reasonable procedure. Protester could not qualify prior to award of contract; therefore, its proposal was properly rejected.

Hill Industries (Hill) protests the refusal of the Army to consider it an approved source for axial compressor cases under request for proposals No. DAAJ09-82-R-B006.

We deny the protest.

The solicitation sought axial compressor housings for engines used in helicopters. The solicitation pricing schedule contained the following description of the required part:

026086

"0001 NSN: 2840-01-008-5729
Axial Compressor Case
P/N 1-101-210-04 AVCO Lycoming
APPL: UH-1 Turbine Engine FIA-CD: HS1BB

APPROVED SOURCES

FSCM

AVCO Corp

91547

F.O.B. DESTINATION"

Hill's price was lowest of the three proposals received by the June 30, 1982, due date. Hill's proposal stated that the parts would be manufactured at its plant and at the plant of Dunlap and Abbot.

By letter of September 22, 1982, the Army informed Hill that the cases must be "procured from AVCO, the approved source for those items." The letter went on to request "documented evidence that the source offered in your proposal is in fact an approved source." Hill replied to that correspondence on October 8, 1982, arguing that since the solicitation was not a sole source, it should be permitted to supply other than AVCO Lycoming parts. Hill contended that it had obtained drawings from the Army under the Freedom of Information Act, which would permit it to manufacture the parts. On November 24, 1982, Hill received a letter from the Army, responding to its letter of October 8. The Army informed Hill that manufacturers' specifications must be approved prior to award of the contract and since Hill had not had its specifications approved, it could not be awarded the contract.

Hill filed this protest on December 7, 1982, arguing that parts manufactured by firms other than AVCO Lycoming should be considered for this requirement, since drawings were available.

The Army argues that Hill's protest is untimely and, therefore, should be dismissed. The Army contends that Hill's protest is of an alleged solicitation defect and should have been filed prior to the due date for proposals as required by section 21.2(b) of our Bid Protest Procedures, 4 C.F.R. § 21.2(b) (1983). Alternatively, the Army argues that Hill's protest was not filed within 10 working days of knowledge of the basis for its protest, as required

by 4 C.F.R. § 21.2(b)(2). According to the Army, Hill should have known from a June 10, 1982, letter to it and the September 22, 1982, letter that only approved sources would be considered.

We find Hill's protest timely. Hill's protest is not of an obvious solicitation defect that would require protesting prior to the due date for submission of proposals. We view Hill's protest as a protest of the Army's refusal to consider it an approved source based on its drawings, not as a protest of AVCO Lycoming being an approved source or of the procurement being an approved-source procurement. The solicitation stated only that AVCO Lycoming was an approved source for the part. It did not, as the Army recognizes, define approved source nor did the solicitation provide any information as to when sources may be approved or how they were to be approved. Additionally, we have held that an approved-source procurement does not preclude the submission or consideration of proposals from unapproved sources which can otherwise qualify their products. Compressor Engineering Corporation, B-206879, October 29, 1982, 82-2 CPD 383. Consequently, Hill was not required to protest until it knew that the Army would not approve it.

The Army's alternative timeliness argument contends that Hill knew that it would not be approved based on the Army's June 10 or September 22 letter.

The June 10 letter was a request for information from Hill to aid in its approval as a source. We do not think that Hill was required to protest based on that letter. The September 22 letter did state that Hill's source was not approved and that the part must be an AVCO Lycoming part. Although the Army did state in the letter that Hill could submit documentation showing that it was providing parts from an approved source, arguably Hill knew enough at that point to require a protest.

We consider Hill's October 8 letter to be a protest to the Army. Hill disagreed with the Army's position and asserted that it should be approved because it had obtained drawings. A protest need not be in any particular form so long as it can be reasonably read as lodging specific objections to the agency's procurement actions. Abreen Corporation, B-197261, April 18, 1980, 80-1 CPD 274. Since Hill received the September 22 letter on September 30, its October 8 letter was a timely protest.

We will consider a subsequent protest of a timely filed agency protest if the protest to GAO is filed within 10 days of initial adverse agency action. 4 C.F.R. § 21.2(a). The Army letter answering Hill's October 8 letter appears to be the initial adverse agency action and was received by Hill on November 24. Consequently, Hill's protest to us, filed on December 7, was within 10 working days and is timely.

We, however, deny Hill's protest on the merits.

The Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.) permits procurement of spare parts on a restricted basis if the restriction serves a bona fide need of the Government. Such restrictions include those essential to assure procurement of a satisfactory end product or to determine the high level of quality and reliability assurance necessitated by the criticality of the product. Department of Agriculture's Use of Master Agreement, 54 Comp. Gen. 606, 609 (1975), 75-1 CPD 40. Also, an acceptably restricted procurement must be structured so that no firm which is able to provide a satisfactory product is necessarily precluded from competing and a firm may become eligible to compete at any time it demonstrates under suitable procedures that it is able to furnish an acceptable item.

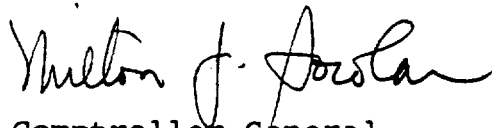
Thus, while DAR § 1-313(c) allows a procuring activity to solicit only approved suppliers, it does not preclude the submission and consideration of proposals from unapproved sources which can otherwise qualify their products under suitable testing procedures. Compressor Engineering Corporation, supra. Also, we have consistently taken the position that agencies must give alternate producers an opportunity to qualify when procuring replacement parts. See Parker Hannifin Corporation, B-199937, October 2, 1981, 81-2 CPD 270. Essentially, Hill argues that it should be approved because it can produce the part from drawings that it received from the Army pursuant to a Freedom of Information Act request.

The Army reports that the compressor housing is a safety critical part of the helicopter engine because it contains heated air under pressure and because it provides structural support to other engine parts. Consequently, it must be procured from a restricted source to assure a high level of quality and reliability. According to the Army, the drawings obtained by Hill are not current, but, even if

current, would not be sufficient to approve the part on that basis. The Army points out that it has made an effort during the course of this procurement to permit Hill to become an approved source and continues to do so.

We find that the Army has met all of the requirements for an acceptable restricted procurement and that Hill did not qualify. The reason for restricting the procurement, the need for high quality in a safety critical part, is a bona fide Government need. Additionally, the Army did accept a proposal from Hill, a nonapproved source, and attempted to have Hill qualify under an acceptable procedure. That procedure involves the provision of evidence showing similar acceptable previous work and ability to manufacture the part. Also, the Army is continuing to permit Hill to qualify as an approved source.

Protest denied.

for 
Comptroller General
of the United States